

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

AARON J. BRESSI,

Plaintiff,

v.

JEFFREY BRENNEN, et al.,

Defendants.

No. 4:17-CV-01742

(Judge Brann)

(Magistrate Judge Saporito)

ORDER

SEPTEMBER 13, 2019

Aaron J. Bressi filed this 42 U.S.C. § 1983 complaint alleging that numerous Defendants violated his constitutional rights.¹ In 2018, Magistrate Judge Joseph F. Saporito, Jr., issued a Report and Recommendation recommending that this Court dismiss Bressi's complaint.² Magistrate Judge Saporito noted that three of Bressi's claims were barred by the statute of limitations, six were barred by the favorable termination rule, two failed to state a claim as a matter of law, and an excessive force claim was not supported by sufficient factual averments.³ This Court adopted the recommendation and dismissed the complaint.⁴ Given the nature of the procedural

¹ Doc. 1.

² Doc. 41.

³ *Id.* at 11-29.

⁴ Doc. 45.

bars to several of Bressi's claims, this Court "granted leave to amend *only* the excessive force claim that has dismissed without prejudice."⁵

Bressi duly filed his amended complaint in which he expanded upon his excessive force claim, but also reasserted several claims that the Court did not grant leave to amend.⁶ As to the excessive force claim, Bressi asserted that, for no apparent reason, Officer Jeffrey Brennan "[w]rapped his hands around my neck from my right side, and slammed me up against the concrete cinder block wall . . ."⁷ Because the amended complaint exceeded the scope of amendment permitted by the Court, Magistrate Judge Saporito struck all claims except the excessive force claim.⁸

In August 2019, Magistrate Judge Saporito issued a second Report and Recommendation recommending that this Court grant Defendants' motion to dismiss and dismiss Bressi's excessive force claim.⁹ Specifically, Magistrate Judge Saporito concluded that Bressi's complaint asserts only a *de minimis* use of force, which is insufficient to support an excessive force claim.¹⁰

Bressi filed timely objections to the Report and Recommendation, asserting that portions of his amended complaint should not have been stricken, and

⁵ *Id.*

⁶ Doc. 46.

⁷ *Id.* at 20-21.

⁸ Doc. 70.

⁹ Doc. 73.

¹⁰ *Id.* at 7-9.

asserting—in conclusory fashion—that Brennan used excessive force.¹¹ “If a party objects timely to a magistrate judge’s report and recommendation, the district court must ‘make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’”¹² Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge’s findings or recommendations.¹³

Upon de novo review of Magistrate Judge Saporito’s Report and Recommendation, the Court finds no error in the conclusion that Bressi has failed to state a claim for excessive force.¹⁴ Moreover, because it is clear that amendment would be futile, that claim will be dismissed with prejudice.¹⁵ The Court further finds no error in Magistrate Judge Saporito’s earlier order striking portions of

¹¹ Doc. 75.

¹² *Equal Emp’t Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) (quoting 28 U.S.C. § 636(b)(1)).

¹³ 28 U.S.C. § 636(b)(1); Local Rule 72.31.

¹⁴ The force that Brennan allegedly used may, at first blush, seem unreasonable—and may well constitute an assault. However, “the constitutional floor against excessive force is not consonant with common-law assault” and, thus, “even where a suspect does not actively resist, the use of force must cross the *constitutional* line.” *Hanson v. Madison Cty. Det. Ctr.*, 736 F. App’x 521, 530 (6th Cir. 2018) (citing *Wilkins v. Gaddy*, 559 U.S. 34, 38 (2010); *Bell v. Wolfish*, 441 U.S. 520, 539 n.21 (1979)). As the United States Supreme Court has explained, “[a]n inmate who complains of a ‘push or shove’ that causes no discernible injury almost certainly fails to state a valid excessive force claim.” *Wilkins*, 559 U.S. at 38 (quoting *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)). Brennan’s act—pushing Bressi into a wall without causing any apparent pain or injury—simply does not cross a constitutional threshold.

¹⁵ Notably, Bressi has filed three complaints in this action, all of which suffer from the same defect. (See Docs. 1, 46, 57). Bressi’s “repeated, ineffective attempts at amendment suggest that further amendment of the complaint would be futile.” *Martin v. Duffy*, 858 F.3d 239, 247 (4th Cir. 2017).

Bressi's amended complaint that exceeded the scope of amendment authorized by this Court. Consequently, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Joseph F. Saporito, Jr.'s Report and Recommendation (Doc. 73) is **ADOPTED** in its entirety;
2. Defendants' motion to dismiss (Doc. 48) is **GRANTED** and Bressi's amended complaint is **DISMISSED** with prejudice; and
3. The Clerk of Court is directed to **CLOSE** this case.

BY THE COURT:

s/ Matthew W. Brann
Matthew W. Brann
United States District Judge